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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,797	11/12/2003	Thomas W. Droog	DROOG ET AL -1 PCT	8045
	7590		DIV	
	10/13/2004		EXAMINER	
			HUYNH, LOUIS K	
			ART UNIT	PAPER NUMBER
			3721	
			DATE MAILED: 10/13/2004	

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/706,797

**Applicant(s)**

DROOG ET AL.

**Examiner**

Louis K. Huynh

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 48-51 and 58-60 is/are pending in the application.  
4a) Of the above claim(s) 16-28 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 48-51 and 58-60 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☒ Certified copies of the priority documents have been received in Application No. 09/890,083.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 16-28 drawn to an invention nonelected with traverse in the Response to Restriction Requirement filed 05/03/2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Interference***

2. Claims 29-60 of this application had been copied from U.S. Patent No. 6,550,226 for the purpose of an interference. Claims 29-47 and 52-57 had been cancelled by the Amendment filed August 27, 2004. Claims 48-51 and 58-60 are pending for the purpose of the interference. However, Applicant has failed to specifically apply each limitation or element of each of the copied claim(s) to the disclosure of the application. See 37 CFR 1.607.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 48-51 and 58-60 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the instant specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The instant specification and drawings do not disclose and/or teach:

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- Providing a pair of finger assemblies and moving the finger assemblies up, over, and down over the top edges of the bag (claims 48);
- Moving the bag toward the sealing apparatus while the finger assemblies are moving away from each other (claims 50 & 60);
- Grasping the opposed top edges of the bag with a pair of grabber arms (claim 48);
- Pulling the grasped top edges of the bag apart (claim 48);
- Moving the finger assemblies away from each other to close the opening of the bag (claims 49 & 59);
- Pulling the grasped edges of the bag apart while delivering the bag to a sealing apparatus (claim 51);
- Grasping the opposed top edges of the bag with a pair of finger assemblies that move inwardly and down to grasp the top edges of the bag (claim 58).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 48-51 and 58-60 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Gates et al. (US 6,550,226).

Because claims 48-51 and 58-60 contains subject matter which was not supported by the instant specification and the originally filed specification of the parent Application No.

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09/890,083, they form new matter and thus are not entitled to the filing date of the parent

Application No. 09/890,083 or PCT/CA00/00114 or Canada 2,262,276.

Claims 48-51 and 58-60 are exact copies of claims 20-23 and 30-32 of U.S. Patent No. 6,550,226 to Gates et al.; they are, therefore, clearly anticipated by U.S. Patent No. 6,550,226 to Gates et al. which has an effective filing date of October 27, 1999 and a publication date of April 22, 2003.

### ***Response to Arguments***

7. Applicant's arguments filed August 27, 2004 have been fully considered but they are not persuasive.

With respect to Claims 48 and 51, the specification at page 11, lines 14-31 and Figure 7(h) teach that only the inner fingers 67 of the inner are capable of moving outwardly from each other to meet the respective outer fingers 62 to clampingly engage a bag 46 but does not disclose or support "grasping the opposed top edges of the bag with a pair of grabber arms." Since the bag is not grasped by the pair of gripper arms, the step of pulling the grasped top edges is thus not supported. Furthermore, the specification does not disclose or support a step of "moving the finger assemblies up, over and down over the top edges of the bag" included in the step of delivering the bag to a sealing apparatus. The delivering step only includes moving the finger assemblies laterally according to the specification at page 14, lines 3-5, which states: "The gripper assembly 50 then retracts laterally, as seen in Figure 7(i), and transfers the bag 46 longitudinally to the conveyor station 54. Moreover, the bag 46 is not grasped and pulled by the gripper arms 62 and 66 while the transferring step is conducted as recited in Claim 51.

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With respect to Claims 49 and 50, the specification does not disclose or support the step of “moving finger assemblies away from each other” because the finger assemblies are fixedly mounted to the gripper assembly 50 according to the specification on page 11, lines 14-31.

With respect to Claim 58, the specification at page 11, lines 14-31 teaches that the fingers assemblies are fixedly mounted to the gripper assembly 50 and that only the inner fingers 67 move outwardly from each other to meet the respective outer fingers 62 to clampingly engage a bag 46; however, the specification does not disclose or support “a pair of finger assemblies that move inwardly and down to grasp the top edges of the bag” as recited in Claim 58.

With respect to Claims 59 and 60, the specification does not disclose or support the step of “moving finger assemblies away from each other” because the finger assemblies are fixedly mounted to the gripper assembly 50 according to the specification on page 11, lines 14-31.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

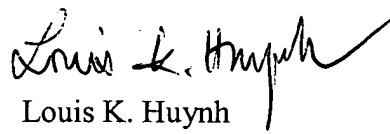
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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694.

The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Louis K. Huynh  
Patent Examiner  
Art Unit 3721

October 12, 2004